

AMENDED IN ASSEMBLY MAY 5, 2004
AMENDED IN ASSEMBLY APRIL 28, 2004
AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2038

Introduced by Assembly Member La Suer

February 17, 2004

An act to add Chapter 4 (commencing with Section 536) to Title 7 of Part 2 of the Code of Civil Procedure, and to amend Sections 853.6, 853.7, and 853.8 of the Penal Code, relating to bench warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2038, as amended, La Suer. Civil bench warrants.

Existing law provides for the issuance of a bench warrant in criminal matters for failure to appear in court pursuant to an order of the court or in violation of his or her promise to appear, as specified.

This bill would establish provisions for the issuance of civil bench warrants in noncriminal actions, specifying the required contents of the civil bench warrant, the sanctions for failure to comply with a civil bench warrant, including authorizing the court to order the Department of Motor Vehicles to withhold issuance of a vehicle or vessel registration and to enter a civil judgment in favor of the party requesting service of the warrant for sheriff's fees incurred and a civil penalty of up to \$5,000, and would specify the consequences of the failure to appear pursuant to a civil bench warrant.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 536) is added to Title 7 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 4. CIVIL BENCH WARRANTS

536. (a) Upon the failure of a party, witness, or other person in a noncriminal action to appear in court as ordered, or to comply with a noncriminal court order, the court may issue a civil bench warrant commanding any peace officer to arrest and bring before the court that party, witness, or other person.

(b) Prior to the issuance of a civil bench warrant for failure to appear, as provided in subdivision (a), the person seeking the warrant shall file a proof of service with the court.

(c) The court may order the Department of Motor Vehicles to withhold the issuance of any registration for a motor vehicle or vessel registered to a person who fails to appear as promised following arrest on a warrant issued pursuant to this section. In addition, the court may enter a civil judgment for sheriff's fees and a civil penalty of not more than five thousand dollars (\$5,000) in favor of the party requesting service of the warrant issued pursuant to this section. The judgment may be enforced in the same manner as other civil judgments for money.

(d) The court shall subsequently withdraw the order to withhold registration upon the appearance of the arrestee in court and payment, in full, of any sheriff's fees and civil penalties ordered pursuant to subdivision (c).

537. A civil bench warrant issued pursuant to Section 536 shall be directed to any peace officer and shall contain all of the following:

(a) The title and case number of the action.

(b) The full name of the person to be arrested, and his or her gender, height, and weight if known to the issuing authority, and his or her last known address.

(c) The date of issuance and county in which it is issued.

(d) The signature of the magistrate, judge, justice, or other authority issuing the bench warrant, the title of his or her office, and the name of the court.

1 (e) A command to arrest the person for failing to comply with
2 a court order and a statement specifying the nature of the court
3 order.

4 (f) A command that the person to be arrested be brought before
5 the nearest magistrate for the setting of bail in the amount of the
6 warrant upon the demand of the person arrested.

7 (g) A statement that the bench warrant expires 180 days after
8 issuance.

9 (h) The amount of bail.

10 (i) Whether nighttime service is permitted for good cause
11 shown as described in Section 840 of the Penal Code.

12 SEC. 2. Section 853.6 of the Penal Code is amended to read:

13 853.6. (a) In any case in which a person is arrested for an
14 offense declared to be a misdemeanor, including a violation of any
15 city or county ordinance, or on a civil bench warrant issued
16 pursuant to Section 536 of the Code of Civil Procedure, and does
17 not demand to be taken before a magistrate, that person shall,
18 instead of being taken before a magistrate, be released according
19 to the procedures set forth by this chapter. If the person is released,
20 the officer or his or her superior shall prepare in duplicate a written
21 notice to appear in court, containing the name and address of the
22 person, the offense charged, and the time when, and place where,
23 the person shall appear in court. If, pursuant to subdivision (i), the
24 person is not released prior to being booked and the officer in
25 charge of the booking or his or her superior determines that the
26 person should be released, the officer or his or her superior shall
27 prepare a written notice to appear in a court.

28 In any case in which a person is arrested for a misdemeanor
29 violation of a protective court order involving domestic violence,
30 as defined in subdivision (b) of Section 13700, or arrested pursuant
31 to a policy, as described in Section 13701, the person shall be taken
32 before a magistrate instead of being released according to the
33 procedures set forth in this chapter, unless the arresting officer
34 determines that there is not a reasonable likelihood that the offense
35 will continue or resume or that the safety of persons or property
36 would be imminently endangered by release of the person arrested.
37 Prior to adopting these provisions, each city, county, or city and
38 county shall develop a protocol to assist officers to determine when
39 arrest and release are appropriate, rather than taking the arrested
40 person before a magistrate. The county shall establish a committee

1 to develop the protocol, consisting of, at a minimum, the police
2 chief or county sheriff within the jurisdiction, the district attorney,
3 county counsel, city attorney, representatives from domestic
4 violence shelters, domestic violence councils, and other relevant
5 community agencies.

6 Nothing in this subdivision shall be construed to affect a
7 defendant's ability to be released on bail or on his or her own
8 recognizance.

9 (b) Unless waived by the person, the time specified in the notice
10 to appear shall be at least 10 days after arrest if the duplicate notice
11 is to be filed by the officer with the magistrate.

12 (c) The place specified in the notice shall be the court of the
13 magistrate before whom the person would be taken if the
14 requirement of taking an arrested person before a magistrate were
15 complied with, or shall be an officer authorized by that court to
16 receive a deposit of bail.

17 (d) The officer shall deliver one copy of the notice to appear to
18 the arrested person, and the arrested person, in order to secure
19 release, shall give his or her written promise to appear in court as
20 specified in the notice by signing the duplicate notice which shall
21 be retained by the officer, and the officer may require the arrested
22 person, if he or she has no satisfactory identification, to place a
23 right thumbprint, or a left thumbprint or fingerprint if the person
24 has a missing or disfigured right thumb, on the notice to appear.
25 Except for law enforcement purposes relating to the identity of the
26 arrestee, no person or entity may sell, give away, allow the
27 distribution of, include in a database, or create a database with, this
28 print. Upon the signing of the duplicate notice, the arresting officer
29 shall immediately release the person arrested from custody.

30 (e) The officer shall, as soon as practicable, file the duplicate
31 notice, as follows:

32 (1) It shall be filed with the magistrate if the offense charged is
33 an infraction.

34 (2) It shall be filed with the magistrate if the prosecuting
35 attorney has previously directed the officer to do so.

36 (3) The duplicate notice and underlying police reports in
37 support of the charge or charges shall be filed with the prosecuting
38 attorney in cases other than those specified in paragraphs (1) and
39 (2).

1 If the duplicate notice is filed with the prosecuting attorney, he
2 or she, within his or her discretion, may initiate prosecution by
3 filing the notice or a formal complaint with the magistrate
4 specified in the duplicate notice within 25 days from the time of
5 arrest. If the prosecution is not to be initiated, the prosecutor shall
6 send notice to the person arrested at the address on the notice to
7 appear. The failure by the prosecutor to file the notice or formal
8 complaint within 25 days of the time of the arrest shall not bar
9 further prosecution of the misdemeanor charged in the notice to
10 appear. However, any further prosecution shall be preceded by a
11 new and separate citation or an arrest warrant.

12 Upon the filing of the notice with the magistrate by the officer,
13 or the filing of the notice or formal complaint by the prosecutor,
14 the magistrate may fix the amount of bail that in his or her
15 judgment, in accordance with Section 1275, is reasonable and
16 sufficient for the appearance of the defendant and shall endorse
17 upon the notice a statement signed by him or her in the form set
18 forth in Section 815a. The defendant may, prior to the date upon
19 which he or she promised to appear in court, deposit with the
20 magistrate the amount of bail set by the magistrate. At the time the
21 case is called for arraignment before the magistrate, if the
22 defendant does not appear, either in person or by counsel, the
23 magistrate may declare the bail forfeited, and may, in his or her
24 discretion, order that no further proceedings shall be had in the
25 case, unless the defendant has been charged with a violation of
26 Section 374.3 or 374.7 of this code or of Section 11357, 11360, or
27 13002 of the Health and Safety Code, or a violation punishable
28 under Section 5008.7 of the Public Resources Code, and he or she
29 has previously been convicted of a violation of that section or a
30 violation that is punishable under that section, except in cases
31 where the magistrate finds that undue hardship will be imposed
32 upon the defendant by requiring him or her to appear, the
33 magistrate may declare the bail forfeited and order that no further
34 proceedings be had in the case.

35 Upon the making of the order that no further proceedings be
36 had, all sums deposited as bail shall immediately be paid into the
37 county treasury for distribution pursuant to Section 1463.

38 (f) No warrant shall be issued for the arrest of a person who has
39 given a written promise to appear in court, unless and until he or
40 she has violated that promise or has failed to deposit bail, to appear

1 for arraignment, trial, or judgment or to comply with the terms and
2 provisions of the judgment, as required by law.

3 (g) The officer may book the arrested person prior to release or
4 indicate on the citation that the arrested person shall appear at the
5 arresting agency to be booked or indicate on the citation that the
6 arrested person shall appear at the arresting agency to be
7 fingerprinted prior to the date the arrested person appears in court.
8 If it is indicated on the citation that the arrested person shall be
9 booked or fingerprinted prior to the date of the person's court
10 appearance, the arresting agency at the time of booking or
11 fingerprinting shall provide the arrested person with verification
12 of the booking or fingerprinting by either making an entry on the
13 citation or providing the arrested person a verification form
14 established by the arresting agency. If it is indicated on the citation
15 that the arrested person is to be booked or fingerprinted, the
16 magistrate, judge, or court shall, before the proceedings begin,
17 order the defendant to provide verification that he or she was
18 booked or fingerprinted by the arresting agency. If the defendant
19 cannot produce the verification, the magistrate, judge, or court
20 shall require that the defendant be booked or fingerprinted by the
21 arresting agency before the next court appearance, and that the
22 defendant provide the verification at the next court appearance
23 unless both parties stipulate that booking or fingerprinting is not
24 necessary.

25 (h) A peace officer shall use the written notice to appear
26 procedure set forth in this section for any misdemeanor offense in
27 which the officer has arrested a person without a warrant pursuant
28 to Section 836 or in which he or she has taken custody of a person
29 pursuant to Section 847.

30 (i) Whenever any person is arrested by a peace officer for a
31 misdemeanor, or on a warrant issued pursuant to subdivision (b)
32 of Section 853.8 of the Penal Code, that person shall be released
33 according to the procedures set forth by this chapter unless one of
34 the following is a reason for nonrelease, in which case the arresting
35 officer may release the person, or the arresting officer shall
36 indicate, on a form to be established by his or her employing law
37 enforcement agency, which of the following was a reason for the
38 nonrelease:

39 (1) The person arrested was so intoxicated that he or she could
40 have been a danger to himself or herself or to others.

1 (2) The person arrested required medical examination or
2 medical care or was otherwise unable to care for his or her own
3 safety.

4 (3) The person was arrested under one or more of the
5 circumstances listed in Sections 40302 and 40303 of the Vehicle
6 Code.

7 (4) There were one or more outstanding arrest warrants for the
8 person.

9 (5) The person could not provide satisfactory evidence of
10 personal identification.

11 (6) The prosecution of the offense or offenses for which the
12 person was arrested, or the prosecution of any other offense or
13 offenses, would be jeopardized by immediate release of the person
14 arrested.

15 (7) There was a reasonable likelihood that the offense or
16 offenses would continue or resume, or that the safety of persons or
17 property would be imminently endangered by release of the person
18 arrested.

19 (8) The person arrested demanded to be taken before a
20 magistrate or refused to sign the notice to appear.

21 (9) There is reason to believe that the person would not appear
22 at the time and place specified in the notice. The basis for this
23 determination shall be specifically stated.

24 (10) The person was arrested on a warrant issued pursuant to
25 subdivision (b) of Section 853.8.

26 The form shall be filed with the arresting agency as soon as
27 practicable and shall be made available to any party having
28 custody of the arrested person, subsequent to the arresting officer,
29 and to any person authorized by law to release him or her from
30 custody before trial.

31 (j) Once the arresting officer has prepared the written notice to
32 appear and has delivered a copy to the person arrested, the officer
33 shall deliver the remaining original and all copies as provided by
34 subdivision (e).

35 Any person, including the arresting officer and any member of
36 the officer's department or agency, or any peace officer, who
37 alters, conceals, modifies, nullifies, or destroys, or causes to be
38 altered, concealed, modified, nullified, or destroyed, the face side
39 of the remaining original or any copy of a citation that was retained
40 by the officer, for any reason, before it is filed with the magistrate

1 or with a person authorized by the magistrate to receive deposit of
2 bail, is guilty of a misdemeanor.

3 If, after an arrested person has signed and received a copy of a
4 notice to appear, the arresting officer determines that, in the
5 interest of justice, the citation or notice should be dismissed, the
6 arresting agency may recommend, in writing, to the magistrate
7 that the charges be dismissed. The recommendation shall cite the
8 reasons for the recommendation and shall be filed with the court.

9 If the magistrate makes a finding that there are grounds for
10 dismissal, the finding shall be entered in the record and the charges
11 dismissed.

12 Under no circumstances shall a personal relationship with any
13 officer, public official, or law enforcement agency be grounds for
14 dismissal.

15 (k) (1) A person contesting a charge by claiming under penalty
16 of perjury not to be the person issued the notice to appear may
17 choose to submit a right thumbprint, or a left thumbprint if the
18 person has a missing or disfigured right thumb, to the issuing court
19 through his or her local law enforcement agency for comparison
20 with the one placed on the notice to appear. A local law
21 enforcement agency providing this service may charge the
22 requester no more than the actual costs. The issuing court may
23 refer the thumbprint submitted and the notice to appear to the
24 prosecuting attorney for comparison of the thumbprints. When
25 there is no thumbprint or fingerprint on the notice to appear, or
26 when the comparison of thumbprints is inconclusive, the court
27 shall refer the notice to appear or copy thereof back to the issuing
28 agency for further investigation, unless the court finds that referral
29 is not in the interest of justice.

30 (2) Upon initiation of the investigation or comparison process
31 by referral of the court, the court shall continue the case and the
32 speedy trial period shall be tolled for 45 days.

33 (3) Upon receipt of the issuing agency's or prosecuting
34 attorney's response, the court may make a finding of factual
35 innocence pursuant to Section 530.6 if the court determines that
36 there is insufficient evidence that the person cited is the person
37 charged and shall immediately notify the Department of Motor
38 Vehicles of its determination. If the Department of Motor Vehicles
39 determines the citation or citations in question formed the basis of

1 a suspension or revocation of the person's driving privilege, the
2 department shall immediately set aside the action.

3 (4) If the prosecuting attorney or issuing agency fails to
4 respond to a court referral within 45 days, the court shall make a
5 finding of factual innocence pursuant to Section 530.6, unless the
6 court finds that a finding of factual innocence is not in the interest
7 of justice.

8 (5) The citation or notice to appear may be held by the
9 prosecuting attorney or issuing agency for future adjudication
10 should the arrestee who received the citation or notice to appear be
11 found.

12 (l) For purposes of this section, the term "arresting agency"
13 includes any other agency designated by the arresting agency to
14 provide booking or fingerprinting services.

15 SEC. 3. Section 853.7 of the Penal Code is amended to read:

16 853.7. Any person who willfully violates his or her written
17 promise to appear or a lawfully granted continuance of his or her
18 promise to appear in court, other than a person arrested pursuant
19 to Section 536 of the Code of Civil Procedure, is guilty of a
20 misdemeanor, regardless of the disposition of the charge upon
21 which he or she was originally arrested.

22 SEC. 4. Section 853.8 of the Penal Code is amended to read:

23 853.8. (a) When a person signs a written promise to appear
24 at the time and place specified in the written promise to appear and
25 has not posted bail as provided in Section 853.6, the magistrate
26 shall issue and have delivered for execution a warrant for his or her
27 arrest within 20 days after his or her failure to appear as promised
28 or within 20 days after his or her failure to appear after a lawfully
29 granted continuance of his or her promise to appear.

30 (b) However, if a person arrested on a civil bench warrant
31 issued pursuant to Section 536 of the Code of Civil Procedure fails
32 to appear after being released on a promise to appear, the court may
33 issue another warrant to bring the person before the court pursuant
34 to subdivision (a). In addition, subdivisions ~~(b) and (c)~~ (c) and (d)
35 of Section 536 of the Code of Civil Procedure shall apply.